

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSE RODRIGUEZ,

Plaintiff,

v.

9:15-CV-0610
(MAD/TWD)

THOMAS GRIFFIN; et al.,

Defendants.

APPEARANCES:

JOSE RODRIGUEZ
96-A-0803
Plaintiff, pro se
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, NY 12589

MAE A. D'AGOSTINO
United States District Judge

DECISION and ORDER

In a Summary Order issued as a Mandate on January 17, 2017, the United States Court of Appeals for the Second Circuit concluded that plaintiff Jose Rodriguez should have been afforded "an opportunity for further amendment" of his amended complaint prior to dismissal. Dkt. No. 23 ("Mandate") at 3. The Second Circuit further concluded that in light of additional factual allegations submitted through appellate counsel regarding exhaustion of administrative remedies, the claims asserted in plaintiff's amended complaint appear to have been timely filed. *Id.* at 3 n.4.¹ The Second Circuit vacated the Judgment of dismissal and

¹ The Second Circuit identified those additional factual allegations as follows:

[O]n August 20, 2013, Rodriguez filed an administrative grievance and the grievance committee thereafter recommended a determination in his favor;

remanded the action to this Court for "such further proceedings as may be appropriate in light of this Order." *Id.* at 3.

Upon review, and in light of plaintiff's status as a pro se litigant, the Court hereby deems plaintiff's amended complaint (Dkt. No. 11) amended to include the additional factual allegations regarding exhaustion of administrative remedies identified by the Second Circuit in the Mandate (see footnote 1). The amended complaint, as so amended, is the operative pleading in this action. The Clerk is directed to issue summonses and forward them to the U.S. Marshal, together with copies of the amended complaint, for service on the defendants. This is not a ruling on the merits of plaintiff's claims and the Court expresses no opinion as to whether plaintiff's claims can withstand a properly filed dispositive motion.

III. CONCLUSION

WHEREFORE, it is hereby

ORDERED that plaintiff's amended complaint (Dkt. No. 11) is deemed amended to include the additional factual allegations regarding exhaustion of administrative remedies identified by the Second Circuit in the Mandate (see footnote 1) and, as so amended, is the operative pleading in this action; and it is further

ORDERED that the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service on the named defendants. The Clerk shall forward a copy of the summons and amended complaint to the Office of the New York Attorney General, together with a copy of this Decision and Order;

Eastern's superintendent, however, then denied Rodriguez's grievance, and that decision was upheld by a review committee on April 6, 2014.

Mandate at 3 n.4 ("Were Rodriguez to include such allegations in an amended complaint, his claims, as alleged, would be timely.").

and it is further

ORDERED that a response to the amended complaint shall be filed by defendants or their counsel as provided for in the Federal Rules of Civil Procedure; and it is further

ORDERED that plaintiff take reasonable steps through discovery to ascertain the identity of unidentified "Doe" defendants; and it is further

ORDERED that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so will result in the dismissal of this action**; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: February 15, 2017
Albany, NY


Mae A. D'Agostino
U.S. District Judge